SUPREME COURT, U. S.
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No. 535

In the Supreme Court of the United States

OCTOBER TERM, 1970

RUFUS WALLACE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D. C. 20530.

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After a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted on one count of transferring marihuana on June 30, 1967, not in pursuance of a written order form, in violation of 26 U.S.C. 4742(a) and two counts of receiving, facilitating the transportation of and concealing marihuana on June 30, 1967 and August 16, 1967, in violation of 21 U.S.C. 176a.

He was sentenced to concurrent prison terms of six years. The court of appeals reversed the convictions under § 176a on the basis of this Court's decision in *Leary* v. *United States*, 395 U.S. 6, and affirmed the conviction under § 4742(a) (Pet. 1a-2a). A petition for rehearing with suggestion for rehearing *en banc* was denied (Pet. 3a).

Petitioner does not argue here that he could not have been convicted under the § 4742(a) charge standing alone, but contends that the introduction at trial of evidence relating to the August 16 transaction (the conviction which was reversed below) was inherently prejudicial to his defense of the June 30 transaction. There is, however, nothing to indicate that the jury did not decide petitioner's guilt on the § 4742(a) count, as instructed, on the evidence pertaining to that count alone. Since the record in this regard fully supports the verdict, there is no warrant for further review.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1970.

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